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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 0 1 2008

LIN-06-260-51849

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Lori B
for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development company. It seeks to employ the beneficiary permanently in the United States as a computer software application engineer (data integration developer II). As required by statute, an ETA Form 9089 Application for Alien Employment Certification (the ETA Form 9089 or labor certification), approved by the Department of Labor (DOL), accompanied the petition.[1] Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a four-year bachelor's degree as required on the ETA Form 9089. Accordingly, the director denied the petition under the third reference professional category.

As set forth in the director's May 7, 2007 decision, the primary issue in the current petition is whether the beneficiary possessed the requisite bachelor's degree for the proffered position.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary. On appeal counsel asserts that with the three-year bachelor of commerce degree from Bangalore University and a higher diploma in software engineering from APTECH in India, the beneficiary's education is equivalent to a four-year bachelor's degree from an accredited university in the United States and he is qualified to perform the duties of the proffered position as set forth on the ETA Form 9089. In order to determine whether the beneficiary's education could be evaluated as the equivalent to a U.S. four-year degree and whether the petitioner specified on the certified ETA Form 9089 that the minimum academic requirements of a bachelor's degree or equivalent might be met through a combination of lesser degrees and/or quantifiable amount of work experience, the AAO issued a request for evidence (RFE) on March 17, 2008 granting the petitioner 12 weeks to submit additional evidence to support its assertions on appeal. The AAO received the response on June 9, 2008. However, the response was filed by an attorney other than the one who filed the instant appeal on behalf of the petitioner. The new

[1] The regulatory scheme governing the alien labor certification process contains certain safeguards to assure that petitioning employers do not treat alien workers more favorably than U.S. workers. The current DOL regulations concerning labor certifications went into effect on March 28, 2005. The new regulations are referred to by the DOL by the acronym PERM, for Program Electronic Review Management. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The PERM regulation was effective as of March 28, 2005, and applies to labor certification applications for the permanent employment of aliens filed on or after that date. Since the instant labor certification application was filed after March 28, 2005 and is governed by the PERM regulations.

attorney claims that Teradala Operations, Inc. acquired the petitioner in the instant case in March 2008 and also submits a copy of Form G-28 signed by [redacted] and share purchase agreement between Teradala Operations, Inc. and the petitioner and its shareholders. However, the share purchase agreement is a draft copy, is not dated and is not signed. Therefore, the new attorney failed to establish that Teradala Operations, Inc. is the successor-in-interest to the petitioner. In addition, the attorney also failed to sign the Form G-28. Therefore, this office considers that counsel who filed the instant appeal continues to represent the petitioner in this matter since the record of proceeding contains a properly executed Form G-28 signed by the petitioner's representative and by the attorney who filed the instant appeal. The documentation submitted in response to the AAO's RFE will be considered as submitted by the petitioner.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal and in response to the AAO's RFE.[2]

To determine whether a beneficiary is eligible for an employment-based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also*, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the petitioner requires a bachelor's degree in computer science, computer information systems, engineering or management information systems and two years of experience in an occupation of SW engineer, SW developer, senior systems analyst, DW/ETL consultant, DB administrator or application engineer, etc. as the minimum requirements for the proffered position in Part H of the ETA Form 9089. The petitioner also requires specific experience in one or more of the following areas: Informatica, IBM/Ascential (DataStage, ProfileStage, QualityStage), Ab Initio, Business Objects (Data Integrator), Cognos (DecisionStream), Sunopsis, Microsoft (SQL Server Integration Services), or Oracle (PL/SQL).

The original ETA Form 9089 was accepted on December 30, 2005 and certified on April 18, 2006 for the position of data integration developer II. The petitioner assigned the occupational code of 15-1031.00, computer software engineers, application, to the proffered position on ETA Form 9089. According to DOL's

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

public online database at http://online.onetcenter.org/find/result?s=15-1031.00&g=Go (accessed July 16, 2008) and its extensive description of the position and requirements for the position same with data integration developer position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to programmer analyst position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See* http:// online.onetcenter.org/link/summary/15-1031.00#JobZone (accessed July 16, 2008). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

> A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

Therefore, a data integration developer position can be properly classified as a professional or as a skilled worker.

Authority to Evaluate Whether the Alien is Eligible for the Classification Sought

As noted above, the ETA Form 9089 in this matter is certified by DOL. Thus, at the outset, it is useful to discuss DOL's role in this process. Section 212(a)(5)(A)(i) of the Act provides:

> In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
>
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

According to 20 C.F.R. § 656.1(a), the purpose and scope of the regulations regarding labor certification are as follows:

> Under § 212(a)(5)(A) of the Act certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:
>
> > (1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and
> >
> > (2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts.

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14). Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
>
> * * *
>
> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now CIS), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have

experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act as he does not have the minimum level of education required for the equivalent of a bachelor's degree.

For the professional category, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

(Emphasis added.)

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." (Emphasis added.) Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word "degree" in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement in of a "degree" for members of the professions is deliberate. Significantly, in another context, Congress has broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university,

school, or other institution of learning." Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate "degree" and be a member of the professions reveals that member of the profession must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential.

In Part J of the ETA Form 9089, the beneficiary indicated that the highest level of education achieved relevant to the requested occupation is a Bachelor's degree in commerce and software engineering in 1997 from Bangalore University in India. In corroboration of the ETA Form 9089, your organization provided the beneficiary's Bachelor of Commerce degree and transcripts from Bangalore University, and Higher Diploma in Software Engineering and mark sheets from APTECH Computer Education.

In determining whether the beneficiary possessed a single U.S. bachelor's degree in computer science, computer information systems, engineering, or management information or a foreign equivalent degree and thus is qualified for the professional position, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, http://aacraoedge.aacrao.org/register, EDGE is "a web-based resource for the evaluation of foreign educational credentials." EDGE provides a great deal of information about the educational system in India. While it confirms that a bachelor of commerce degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate. In addition, a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the beneficiary's degree from Bangalore University cannot be considered a foreign equivalent degree.

EDGE discusses both Postsecondary Diplomas, for which the entrance requirement is competition of secondary education, and Postgraduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Postsecondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." The "Advice to Author Notes," however, provide:

> Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the

entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

In the instant case, the record does not contain any evidence showing the beneficiary holds a four-year U.S. bachelor's degree in one of the required fields, nor does the record contain any evidence showing that the higher diploma from APTECH Computer Education is a postgraduate diploma issued by an accredited university or institution approved by AICTE and its entrance requirement is the three-year bachelor's degree. This office also accessed the AICTE website and did not find APTECH Computer Education in the list of Accredited Programmes of Technical Institutions for the State of Karnataka. *See* http://www.nba-aicte.ernet.in/nmna.htm. In addition, PIER World Education Service Special Report 1997 India shows that the higher diploma in computer science program at APTECH requires bachelor's degree enrollment only, but not the three-year bachelor's degree. Therefore, the beneficiary's higher diploma from APTECH is not a degree, nor is it a postgraduate diploma from a university or institution approved by AICTE.

Counsel asserts on appeal that the beneficiary possessed the equivalent to a U.S. bachelor's degree in computer science or one of the required fields according to private credential evaluations from Morningside Evaluation and Consulting (Morningside), Educational Evaluation and Immigration Services (EEIS) and The Trustforte Corporation (Trustforte). The Morningside March 3, 2004 evaluation and EEIS' October 16, 2002 evaluation evaluate that the beneficiary's foreign education alone is equivalent to a U.S. bachelor's degree based on the beneficiary's three-year bachelor's degree and the higher diploma from APTECH. However, the combination of the beneficiary's three-year degree and the diploma from APTECH cannot be evaluated as a single foreign equivalent degree because the diploma from APTECH is not a postgraduate diploma following a three-year degree from an accredited university or institution approved by ACITE. The Trustforte June 6, 2008 evaluation states that the beneficiary attained the equivalent of a bachelor of science degree with a dual major in computer information systems and accounting from an accredited U.S. college or university based on his bachelor of commerce from Bangalore University and at least five years and four months of professional experience in computing. This evaluation used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

In response to the AAO's RFE, the petitioner refers to a decision issued by the AAO on June 14, 2007 concerning the equivalent from a combination of educations at two different colleges, but does not provide its published citation. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

As the beneficiary cannot show that he had a United States bachelor's degree or a foreign degree equivalent to a United States bachelor's degree, the beneficiary would not qualify as a professional or under the skilled worker category. Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification

under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides that if the petition for a skilled worker, "the petition must be accompanied by evidence that the alien meets the educational, training or experience, and other requirements of the individual labor certification . . . ." Here the petitioner has not shown that the beneficiary met the educational requirement of a Bachelor's degree or a foreign equivalent degree as stated by the petitioner on the ETA Form 9089.

The AAO concurs with the director's findings that the record does not contain any evidence that the beneficiary holds a single United States baccalaureate degree or a single foreign equivalent degree from a college or university to be qualified as a professional for third preference visa category purposes. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree" in computer science or related field as set forth by the ETA Form 9089, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(ii) of the Act. Thus, the petitioner failed to demonstrate that the beneficiary is qualified for the proffered professional position, and counsel's assertions on appeal cannot overcome the grounds of denial in the director's May 7, 2007 decision. Therefore, the director's ground denying the petition under professional category must be affirmed.

Beyond the director's decision, the AAO will discuss whether the petitioner demonstrated that the beneficiary possessed the qualifying experience prior to the priority date. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089 as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted on December 30, 2005.

To determine whether a beneficiary is eligible for an employment based immigrant visa, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also*, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the certified ETA Form 9089 requires twenty-four (24) months of experience in alternate occupations as a SW engineer, SW developer, senior systems analyst, DW/ETL consultant, DB administrator, application engineer, etc. The petitioner also requires specific experience in one or more the following areas: Informatica, IBM/Ascential (DataStage, ProfileStaghe, QualityStage), Ab Initio, Business Objects (Data

Integrator), Cognos (Decision Stream), Sunopsis, Microsoft (SQL Server Integration Services), or Oracle (PL/SQL).

The beneficiary set forth his credentials on the ETA Form 9089. In Part K, Alien Work Experience, he represented that he has been working full time for the petitioner in the proffered position since June 7, 2004. Prior to that, he worked for iORMYX Inc. in Herndon, Virginia as a full-time senior consultant from November 3, 2000 to June 4, 2004; for Aquila Technologies in Bangalore, India as a project leader from June 7, 2000 to November 1, 2000; for PDIP in Bangalore as a database administrator from June 1, 1999 to April 30, 2000; and for Hindustan Aeronautics Ltd. in Bangalore as a systems analyst/programmer from May 16, 1997 to May 30, 1999. He did not provide any additional information concerning his employment background on that form. The beneficiary's higher diploma in software engineering was issued by APTECH on November 26, 1997, and based on which the beneficiary claimed that he completed two years of full-time studies after his bachelor from Bangalore University. However, the record does not contain any explanation from the beneficiary how he managed both his full-time study at APTECH and the full-time work for Hindustan Aeronautics Ltd. during the period from May 16, 1997 to November 26, 1997. The beneficiary's resume in the record indicates that the beneficiary is working as a senior consultant for the petitioner while the beneficiary claimed to have been working as a data integration developer on the ETA Form 9089. The record does not contain any explanations or independent objective evidence to resolve the inconsistency.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The instant I-140 petition was submitted on September 8, 2006 with evidence pertinent to the beneficiary's qualifications as required by the above regulation. To establish the beneficiary's two years of experience required by the ETA Form 9089, the petitioner submitted a letter undated but notarized on August 19, 2006 from an individual named [redacted] August 19, 2006 letter). This letter states in pertinent part that:

> [redacted] USA hereby state under penalty of perjury of the laws of the United States of America, the following.
>
> 1. I am a citizen of India.
> 2. I was born on [redacted]
> 3. I have known [the beneficiary] from 3rd November 2000 – till date.
>
> [The beneficiary] worked for iOPMYX Inc from November 2000 to June 2004. [The beneficiary] joined iOPMYX as Programmer Analyst in Nov 2000 and his last title was

> Senior Consultant when he left the company. He was a full time employee of iORMYX inc working an average 40 hours per week.
>
> During his employment with iORMYX Inc, [the beneficiary] reported to me and responsible for ... ...

The regulation at 8 C.F.R. § 204.5(g)(1) requires a letter relating to qualifying experience from a current or former employer. During the processing the instant appeal, the AAO noted that the [redacted] August 19, 2006 letter appears to be not a letter from the beneficiary's former employer, but a letter from an individual who personally knows the beneficiary. The regulation allows the director to consider other documentation only if such a required letter is unavailable. The record does not contain any documentary evidence to explain why the evidence required by the regulation is not provided and whether or not such evidence is unavailable. Therefore, the AAO requested the petitioner to submit primary evidence as required by the regulation to establish that the beneficiary possessed the requisite work experience prior to the priority date.

In response to the AAO's RFE, the petitioner submits an affidavit dated June 3, 2008 from the same [redacted] June 3, 2008 letter), a letter dated November 25, 2002 from [redacted], Vice President of iORMYX (iORMYX November 25, 2002 letter), the beneficiary's W-2 forms issued by iORMYX for 2002, 2003 and 2004, a copy of the approval notice for an I-129 petition for a nonimmigrant worker filed by iORMYX on behalf of the beneficiary for a period from October 29, 2002 to October 21, 2005, the beneficiary's paystubs from iORMYX for some pay periods in 2003, a letter dated February 16, 2000 from [redacted] the project manager of PDIP India (PDIP February 16, 2000 letter), two letters dated June 6, 2000 and October 21, 2000 respectively from [redacted], the president & CEO of Aquila Technologies Pvt Ltd (Aquila June 6, 2000 letter and Aquila October 21, 2000 letter respectively), and a letter dated December 18, 1996 from [redacted] Deputy General Manager of Hindustan Aeronautics Ltd. (Hindustan December 18, 1996 letter).

The Balachandran's June 3, 2008 letter shows that the writer was the manager of the beneficiary at iORMYX but is currently employed with the petitioner in the instant case. Although this second letter is from the beneficiary's former manager, it is still a letter from an individual who personally knows the beneficiary instead of a letter from the company for which the beneficiary worked before as required by the regulation. The petitioner does not submit any evidence explaining why such a letter from the beneficiary's former employer has not been submitted or why such a letter is unavailable. In addition, the Balachandran's June 3, 2008 letter provides inconsistent information regarding the beneficiary's employment. The letter says that the writer was employed during the period from September 1999 to January 2005 and was the manager of the beneficiary from May 5, 2002 to May 2004 with iORMYX at [redacted] However, the submitted evidence in the record shows that the beneficiary did not work for iORMYX in the United States until he was transferred in November 25, 2002 from its Bangalore, India branch office. The writer does not provide the record or sources based on which he verifies that the beneficiary worked in Herndon, VA from May 2002 to November 2002. Nor does he explain how he could supervise the beneficiary in India during the six months from May 2002 to November 2002. That inconsistency raises a doubt on authenticity and reliability of the Balachandran's two letters. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "Doubt

cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." Therefore, the [redacted] letters submitted in the record cannot be considered as primary evidence to establish the beneficiary's experience with iORMYX.

The iORMYX November 25, 2002 letter is a letter notifying the beneficiary of his transferring from the company's India branch to its U.S. location. It may evidence that the beneficiary had worked for the company in its India branch before and would continue to work for the company in the United States. However, the letter does not verify the beneficiary's employment with the company in India with the employment period, title or position, and duties performed, nor it could certify the beneficiary's future experience with the company in the United States. Therefore, the iORMYX November 25, 2002 letter cannot be accepted as evidence as prescribed by the regulation to establish the beneficiary's qualifying two years of experience from his employment with iORMYX. The beneficiary's W-2 forms for 2002, 2003 and 2004, the I-129 approval notice and the beneficiary's paystubs in 2003 show that the beneficiary worked for iORMYX for one month in 2002, the whole year in 2003 and about five months in 2004.[3] However, these documents do not show the beneficiary's position and the duties he performed. Therefore, the AAO cannot determine whether the beneficiary's employment with iORMYX qualifies him to perform the duties set forth on the ETA Form 9089. Moreover, the pay records demonstrate the beneficiary's 18 months of working experience while the proffered position requires 24 months of experience. The petitioner failed to submit evidence as required by the regulation to demonstrate that the beneficiary obtained the requisite two years of experience from the employment with iORMYX prior to the priority date.

The PDIP February 16, 2000 letter is an appointment letter by which the company named PDIP India offered the beneficiary a position of database administrator at its Bangalore office beginning on the same day of the date of the letter. It does not and could not verify the beneficiary's employment with this company because the offered employment started from the date of the letter. It could not include a specific description of the duties the beneficiary performed because at that time the beneficiary had not started to perform any duties yet. The letter even does not include a specific description of the duties the beneficiary would perform in the future. Therefore, the PDIP February 16, 2000 letter cannot be given evidentiary weight in demonstrating the beneficiary's qualifications for the proffered position.

The Aquila June 6, 2000 letter is also a probationary employment offer letter with which Aquila offered the beneficiary a position of software engineer. The Aquila October 21, 2000 letter notified the beneficiary that his resignation letter dated October 9, 2000 was accepted and the employment would be determined on October 21, 2000. These two letters from the beneficiary's former employer indirectly verify that the beneficiary worked for Aquila as a software engineer for four months from June 19, 2000 to October 21, 2000. However, neither of them includes a specific description of the duties performed by the beneficiary

[3] The amounts of the compensation paid to the beneficiary reflected in the submitted beneficiary's paystubs for some pay periods in January, February, March, October, November and December in 2003 and W-2 form for 2003 show that the beneficiary was fully paid his annual salary of $45,000 as set forth in the transferring agreement entered between the company and the beneficiary. For 2002 and 2004, the AAO calculated the length of the beneficiary's actual working period based on the beneficiary's compensation amounts reflected on his W-2 forms ($3,776.41 in 2002 and $19,817.22 in 2004 respectively).

during the employment as required by the regulations. Without such a specific description of the duties, the AAO cannot determine whether the beneficiary's experience obtained from his employment with Aquila qualifies him to perform the duties of the proffered position set forth by the ETA Form 9089 in this case. In addition, according to the letters, the beneficiary worked for Aquila as a software engineer for four months only. The petitioner would fail to demonstrate that the beneficiary possessed the requisite two years of experience prior to the priority date even if either of the Aquila letters had provided a specific description of the duties performed by the beneficiary and the duties performed had qualified him to perform the duties as set forth on the labor certification. Moreover, the record does not contain any evidence to support the beneficiary's four months of employment with Aquila.

Finally, the petitioner also submits the Hindustan December 18, 1996 letter in response to the AAO's RFE as evidence to establish the beneficiary's qualifying experience. As previously indicated, the Hindustan December 18, 1996 letter is written by [redacted] Deputy General Manager, P&A Design Complex, on the Hindustan Aeronautics Ltd. Letterhead. It states in pertinent part that:

> This is to certify that [the beneficiary][4] student of B.com Degree from Christ College B'lore has under gone practical training on no-pay no-fee basis in the computer service Department, Design Complex, from 15th May 1996 to 13th November 1996. During the period of training, [the beneficiary familiarised in C, UNIX, MVS, FOXPRO, DB2, LOTUS1,2,3 developed modules in FoxPro 2.5 (version) for Library Management System at the Unit Library, D3sign complex, Hindustan Aeronautics Ltd, Bangalore.
>
> 2. His punctuality, Behaviour and Progress in Training were GOOD and his conduct was EXCELLENT, as rated by the Department.

This letter shows that the beneficiary's period with Hindustan Aeronautics was considered by them as part of his college study -- practical training rather than working experience: he was called student, he was not offered any position or title, and his training was rated with grades Good and Excellent. The certified ETA 9089 does not require any training for the proffered position. Further, the duties the beneficiary performed during his practical training appear not to qualify him to perform the duties on the ETA 9089. Furthermore, this office cannot find that the beneficiary obtained specific experience in one or more the following areas: Informatica, IBM/Ascential (DataStage, ProfileStaghe, QualityStage), Ab Initio, Business Objects (Data Integrator), Cognos (Decision Stream), Sunopsis, Microsoft (SQL Server Integration Services), or Oracle (PL/SQL) as the petitioner specially requires for the proffered position. In addition, the whole practical training lasted only six months while the labor certification requires 24 months of experience as a SW engineer, SW developer, senior systems analyst, DW/ETL consultant, DB administrator, application engineer, etc.

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[4] Although the letter spells the beneficiary as [redacted] differently from the instant petition, we assume that the inconsistency is from a different translation of the beneficiary's name and consider the individual referred in the letter as the beneficiary in the instant case.

Therefore, the record of proceeding does not contain any evidence to demonstrate that the beneficiary possessed the qualifying two years of experience in one of the alternative occupations listed in Item 10-B, Part H of the ETA Form 9089. The petitioner failed to submit sufficient evidence as prescribed by regulation to establish the beneficiary's requisite two years of experience prior to the priority date, and thus failed to establish the beneficiary's qualifications for the proffered position.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.